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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of)

Application of)

Pennsylvania RSA No. 6)
(II) Limited Partnership)
To Provide Cellular Service)
On Frequency Block B In)
Pennsylvania RSA #6 - Lawrence)

File No. 10983-CL-P-617-B2-89

PETITION TO STAY THE EFFECTIVENESS
OF THE GRANT PENDING RECONSIDERATION

Citizens Utilities Company of Pennsylvania ("Citizens"), North Pittsburgh Telephone Company ("North Pittsburgh"), and Venus Cellular Telephone Company, Inc. ("Venus") (collectively referred to as "Petitioners") hereby request that the effect of the FCC's grant of a construction permit to the Pennsylvania RSA #No. 6 (II) Limited Partnership (the "Partnership") on November 19, 1990¹ be stayed and that the grant be reconsidered. The reasons for this request are as follows.

- I. No Partnership Has Yet Been Formed And
Therefore The Commission Cannot Properly
Award A Construction Permit To It

Citizens, North Pittsburgh and Venus are wireline applicants

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in Pennsylvania RSA #6 - Lawrence.² Prior to the lottery for Pennsylvania RSA #6, scheduled for November 8, 1989, Petitioners entered into a full market settlement agreement with the other four applicants for the RSA. The FCC was notified of the full market settlement and copies of the relevant documents were submitted on November 6, 1989.

The settlement agreement provides, inter alia, that the market is to be partitioned. One "sub-RSA," comprising the southern portion of Butler and Armstrong counties, is to be licensed to a partnership to be formed and known as Pennsylvania RSA No. 6 (II) Limited Partnership. Bell Atlantic Mobile systems ("BAMS") is to own a 57.13% interest as a general partner, and Citizens, North Pittsburgh, and Venus are each to own 14.29% interests as limited partners in the partnership to be formed. BAMS's is to be the surviving application if the partnership is formed. The other "sub-RSA" is not involved here.

The FCC gave public notice of the filing of the full market settlement and the partitioning of the RSA on February 2, 1990,³ specifying that any Section 1.65 amendment to BAMS's application reflecting the settlement agreement had to be filed by April 6, 1990.

² See Lottery Notice, Mimeo 4239, released August 29, 1989. The fee numbers of Citizens, North Pittsburgh, and Venus were 9274002, 9259228, and 9259230 respectively.

³ Public Notice, Report No. CI-90-94, released February 5, 1990.

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BAMS does not appear to have actually amended its application to substitute the "Partnership" as the applicant. Its two amendments, filed March 14, 1990 and April 10, 1990, only substituted a new signatory to its own application, and proposed a new cell site in the "B2" portion of the RSA. Exhibit No. 1 to the April 10, 1990 engineering amendment, in fact, referred to "BAMS" as "the surviving wireline applicant" in the RSA.

Nonetheless, on May 16, 1990,⁴ the FCC designated the "Partnership" as tentative selectee in the "B2" portion of the RSA. In accordance with that public notice, BAMS, "as general partner and on behalf of [the Partnership]," then amended its application on June 18, 1990 to demonstrate its own financial qualifications. In that amendment, BAMS committed itself to "fully funding" the "Partnership" and submitted BAMS and Bell Atlantic balance sheets.

On November 19, 1990, the Commission gave public notice of the grant of the construction permit to the "Partnership."

However, the "Partnership" has not been formed. In fact, the first and only draft of a limited partnership agreement was submitted to Petitioners by BAMS on November 26, 1990, one week after public notice of the grant of the construction permit. The limited partnership agreement draft submitted to Petitioners is unsatisfactory to them in its present form because, among other reasons, it is not completely in accordance with the settlement agreement. The settlement agreement left to future negotiations

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Public Notice. Report No CL-90-184, Released May 16 1990

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among Petitioners and BAMS most of the terms and conditions of the limited partnership agreement except for certain specific terms set forth in the settlement agreement. The limited partners believe that the draft limited partnership agreement does not include all the terms previously agreed upon in the settlement agreement. Since Petitioners first received the draft on November 26, 1990 they have proceeded to review it and have submitted detailed comments and proposed changes to BAMS. The Petitioners are awaiting advice from BAMS as to when BAMS will meet with the Petitioners to negotiate the Petitioners' proposed changes.

Although Petitioners hope that they will be able to reach a mutually acceptable limited partnership agreement with BAMS, it would be inconsistent with the terms of the settlement agreement and with the FCC's rules and policies for the construction permit to be issued to a presently non-existent entity.

Accordingly, the grant should be stayed and reconsidered until the partnership contemplated by the settlement agreement is formed.

Petitioners submit that the FCC's willingness to process the applications of cellular settlement partnerships without the submission of signed partnership agreements should not undermine the requirement and basic legal principle that such partnerships in fact be formed prior to grant. It should also be underscored that prior to the formation of the partnership contemplated by the settlement agreement, BAMS stands on the same footing as Petitioners. It is not a lottery winner, but rather an applicant which may become a general partner only if the partnership

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contemplated by the settlement agreement is formed. BAMS has no authority to act on behalf of partnership contemplated by the settlement agreement until such partnership is formed and has only limited authority to act on behalf of the Petitioners on FCC matters if such action is consistent with the settlement agreement.

Petitioners want to stress that they do not seek the dismissal of BAMS's application at this time. We merely ask that the FCC stay the effectiveness of the grant until the partnership contemplated by the settlement agreement is formed.

Unless this is done, BAMS might go forward with system construction contrary to the settlement agreement on the same basis that it secured the permit, namely by making filings in its own name "on behalf of" a non-existent partnership. This, we submit, cannot be countenanced by the FCC.

Conclusion

Accordingly, it is hereby requested that the effectiveness of the construction permit grant be stayed and that it be reconsidered until the partnership contemplated by the settlement agreement is formed.

Respectfully submitted,

NORTH PITTSBURGH TELEPHONE COMPANY
CITIZENS UTILITIES COMPANY OF
PENNSYLVANIA
VENUS CELLULAR TELEPHONE COMPANY

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By: Alan Y. Naftalin

Peter M. Connolly

Kotzen & Naftalin
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

Their Attorneys


December 20, 1990

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Declaration

I, G.A. Gorman, hereby state the following: I am the Vice President-Finance and Asst. General Manager of North Pittsburgh Telephone Company. I have read the foregoing Petition. With the exception of those facts of which official notice can be taken, all facts set forth herein are true and correct to my personal knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of December, 1990.



G.A. Gorman
Vice President-Finance &
Asst. General Manager

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VENUS TEL. CORP.

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Declaration

I, John W. Keister, hereby state the following: I am the V.P. Operations of Venus Telephone. I have read the foregoing Petition. With the exception of those facts of which official notice can be taken, all facts set forth herein are true and correct to my personal knowledge, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 19th day of December, 1990.

John W. Keister

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VERIFICATION

The undersigned has read the foregoing Pleading in this case. The statement of fact contained therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties in 18 Pa. C. S. Section 4904 relating to unsworn falsification to authorities which provides that if I make knowingly false averments, I may be subject to criminal penalties.

Michael J. [Signature] (SEAL)

Dated: July 6, 1993

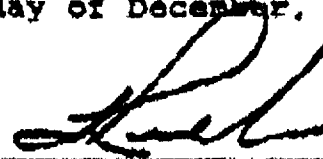
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Declaration

I, L. Russell Mitten, II, hereby state the following: I am the General Counsel, Utility Operations, of Citizens Utilities Company of Pennsylvania. I have read the foregoing Petition. With the exception of those facts of which official notice can be taken, all facts set forth herein are true and correct to my personal knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 20th day of December, 1990.



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Exhibit 4

- notice in the Los Angeles Times of Los Angeles Cellular Telephone Company where it "apologizes for any inconvenience its failure to comply fully [with California Public Utilities Commission ("CPUC") regulations] may have caused the public authorities, L.A. Cellular's subscribers, and the public in general."

- 49 page document (numbered by the Ad-Hoc Association as 4.1, 4.2, ...4.49) pertaining to an investigation settlement agreement L.A. Cellular and the California Public Utilities Commission. The settlement pertaining to alleged violations is for the amounts of \$4.37 million paid, as shown on Ad-Hoc Association numbered exhibit 4 page 4.35, which is page 2 of Attachment E, Schedule 1.

Exhibit 4

- notice in the Los Angeles Times of Los Angeles Cellular Telephone Company where it "apologizes for any inconvenience its failure to comply fully [with California Public Utilities Commission ("CPUC") regulations] may have caused the public authorities, L.A. Cellular's subscribers, and the public in general."

- 49 page document, numbered by the Ad-Hoc Association as pages 4.1, 4.2, ..., 4.49. While the version of the document thus far obtained by the Ad-Hoc Association includes the signatures of the attorneys for L.A. Cellular and the California Public Utilities Commission, and not all parties expected to sign. The Commission may verify with the CPUC that in fact the agreement was signed by all parties and penalty of \$4.37 million paid, as shown on Ad-Hoc Association numbered exhibit 4 page 4.35, which is page 2 of Attachment E, Schedule 1.

SUNDAY APRIL 16 1995

page A 14 Los Angeles

ATTENTION

Times

Los Angeles
Calif. 90012

The Los Angeles Cellular Telephone Company ("L.A. Cellular") has been investigated by the California Public Utilities Commission for the company's failure in some cases to comply fully with all of the Commission's rules and regulations for constructing cellular facilities. The Commission only authorizes construction of cellular facilities that have obtained all requisite permits and approvals from other government agencies.

L.A. Cellular reaffirms its commitment to providing the highest quality service throughout its service area and to complying with all federal, state and local laws, including giving the public required notice and an opportunity to be heard concerning construction of its facilities.

L.A. Cellular apologizes for any inconvenience its failure to comply fully may have caused the public authorities, L.A. Cellular's subscribers, and the public in general.

If you have any comments or concerns regarding this notice, please contact:

California Public Utilities Commission
Attn: Kent Wheatland
505 Van Ness Avenue
San Francisco, CA 94102

INVESTIGATION SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this 20th day of February, 1994, by and between Los Angeles Cellular Telephone Company ("LACTC") and the Advocacy Staff of the Commission Advisory and Compliance Division ("CACTA") of the California Public Utilities Commission ("Commission") (collectively the "Parties").

RECITALS

WHEREAS, the Commission instituted Investigation No. 92-01-002 on its own motion into all facilities-based cellular carriers and their practices, operation and conduct in connection with their construction of communications facilities and their compliance with the Commission's General Order No. 159 (the "Investigation");

WHEREAS, LACTC is a facilities-based cellular carrier that provides cellular service in the largest geographic service area in the State, and consequently became a respondent to the Investigation;

WHEREAS, CACTA was delegated Commission authority to pursue the Investigation;

WHEREAS, on or about April 7, 1993, the Commission issued to LACTC Orders to Show Cause ("OSCs") regarding three of LACTC's cellular sites: Site No. 114 - Ludlow; Site No. 120 - North Orange Drive; and Site No. 353 - Perris School;

WHEREAS, LACTC has separately negotiated and secured a settlement agreement with the Commission's Staff, which is, or will be, presented separately for Commission approval concerning the three OSC sites;

WHEREAS, CACDA and LACTC have identified (a) 149 advice letter filings and associated sites as those facilities which are currently within the defined scope of the investigation as shown in Attachment A; (b) four advice letter filings that are presently pending in motions to be added to the investigation as shown in Attachment B; and (c) 10 advice letter filings the Parties agree to include in this Agreement and to submit to the Prospective Obligations set forth herein to address similar concerns regarding those filings, as shown in Attachment C;

WHEREAS, in an effort to fully investigate possible violations of G.O. 159, CACDA spent six days conducting an on-site inspection at LACTC's corporate offices in Cerritos, California; CACDA audited tens of thousands of documents and records at the management and executive levels to assess LACTC's intent with regard to its Commission compliance filings; CACDA acknowledges LACTC eventually cooperated with CACDA's on-site inspection;

WHEREAS, LACTC holds the following opinions regarding facts and evidence that have emerged during the course of the investigation:

- (a) LACTC attempted in good faith to comply with all terms and requirements of G.O. 159, and substantially complied with G.O. 159's specific terms and general intent;
- (b) LACTC, despite its good faith efforts to comply, did not in some instances comply with G.O. 159, particularly the requirement that advice letters be filed prior to commencing construction;
- (c) LACTC denies having intentionally provided incorrect information in its advice letter or Appendix A and B submissions to the Commission;
- (d) LACTC did not maintain adequate records that would prove LACTC's compliance with G.O. 159 in every instance;
- (e) Due to the enormous volume of material requested by the Commission, the lack of sufficient time in which to respond, and inadequate

records, some responses by LACTC to data requests in the investigation were incomplete or may have been inaccurate;

(f) LACTC denies having intentionally constructed cellular facilities without required local permits and approvals;

(g) CACDA's conduct toward LACTC has been to thoroughly investigate non-compliance, to encourage immediate compliance with all local permit and approval requirements, to illustrate to LACTC the inaccuracies and deficiencies in its Appendix A and B filings, and to persuade LACTC to institute the internal reforms needed to improve its G.O. 159 compliance;

WHEREAS, CACTA holds the following opinions about the facts and evidence that have emerged during the course of the investigation:

- (a) LACTC systematically failed to comply with G.O. 159;
- (b) LACTC systematically filed incorrect information in its advice letter filings, which were submitted under penalty of perjury;
- (c) LACTC failed to maintain or destroyed records concerning compliance or non-compliance with G.O. 159;
- (d) LACTC filed incorrect information systematically favoring LACTC in its Appendix A and B filings submitted during the investigation under penalty of perjury;
- (e) LACTC systematically attempted to avoid obtaining local permits or approvals in order to expedite construction and to expand its service area;
- (f) LACTC knowingly and intentionally violated G.O. 159 or local permitting and approval requirements in some instances, and in others was so grossly and repeatedly negligent that constructive intent might be established through hearings;
- (g) LACTC knowingly and intentionally mislead the Commission by filing incorrect information in its advice letters; LACTC was systematically and

intentionally misleading; in its Appendix A and B filings in this Investigation; to the extent LACTC lacked specific intent to make false and misleading representations, it exercised such gross carelessness that its conduct was equally reprehensible; and . . .

(h) LACTC's conduct toward CACDA was initially to zealously defend its actions; during the course of the Investigation, LACTC began to improve its compliance efforts, to demonstrate to CACDA the difficulties of obtaining historical compliance information from its records and those of its vendors/contractors, and to persuade CACDA that LACTC could initiate internal reforms to better its compliance with G.O. 159;

WHEREAS, both LACTC and CACDA have expended substantial time and resources in connection with the Investigation; both believe further litigation would necessitate additional expenditures; and both wish to avoid these additional costs by entering into this Agreement;

WHEREAS, LACTC and CACDA agree that: (1) full litigation of LACTC's compliance obligations and performance would be extremely burdensome for the Parties and the Commission; (2) full litigation of issues regarding LACTC's intent in providing incorrect information to the Commission's staff would be extremely burdensome and not likely to lead to significant changes to the opinions of the Parties expressed above; (3) full litigation would be less productive and constructive than bringing all sites into compliance, improving LACTC's internal controls, and possibly contributing to environmental mitigation and improved information systems; and (4) CACDA, in light of this Agreement, can better deploy its resources by focusing the Investigation on other non-compliant cellular utilities;

WHEREAS, LACTC and CACDA desire to settle all compliance and representation issues concerning all sites and associated advice letters in

Attachments A through C without regard for additional information that might be discovered through continued investigation and full litigation;

WHEREAS, LACTC is committed to ensuring that its entire cellular system is in full compliance with all state and local laws and regulations; and . . .

WHEREAS, the Parties recognize and acknowledge that the obligations of utilities to provide accurate information to the Commission is a critical component of the regulatory compact, and that extensive failure to meet such obligations, regardless of the underlying intent, are very serious matters subject to substantial fine or penalty by the Commission.

NOW, THEREFORE, for and in consideration of the mutual terms, covenants and conditions contained herein, the Parties agree as follows:

1. Definitions

1.1 Construction: The term "Construction" as used herein shall be defined in accordance with G.O. 159 and all Commission decisions rendered, or to be rendered, thereunder as including demolition, clearing, and any other preparatory actions that disturb the site; which are not excluded under G.O. 159 § III(D) as:

(1) maintenance, repair or replacement at an existing site having no environmental effect; (2) soil, geological or site survey work having no environmental effect; (3) emergencies; or (4) temporary facilities; and which, pursuant to G.O. 159, cannot take place prior to: (1) a Commission resolution authorizing construction; or (2) submission of an advice letter with an undertaking meeting the Commission Advisory and Compliance Division's ("CACTD's") requirements.

1.2 Effective Date: The term "Effective Date" as used herein shall mean the date upon which the Commission's decision approving this Agreement becomes final and nonappealable.

1.3 Essential Terms: The term "Essential Terms" as used herein shall mean those terms which are material to the balance of rights and obligations under this Agreement, and which are therefore not severable without disturbing and voiding the intentions of the Parties in reaching this Agreement. The Parties acknowledge and agree that the definitions set forth in this Section 1 are Essential Terms, and are therefore not severable from other terms and conditions identified herein as Essential Terms.

1.4 Facilities: The term "Facilities" as used herein shall be defined in accordance with the preamble and § 111 of G.O. 159 and all Commission decisions rendered, or to be rendered, thereunder, including microwave relay sites, Mobile Telephone Switching Offices ("MTSOs"), replacement of antennas that are more than one-for-one replacement, and additions of equipment.

1.5 Future Filing Obligations: The term "Future Filing Obligations" as used herein shall mean those obligations accepted by LACTC and described in paragraph 3.10.

1.6 Parties: The Term "Parties" as used herein shall mean LACTC and CACDA.

1.7 Prospective Obligations: The term "Prospective Obligations" as used herein shall mean those obligations accepted by LACTC and described in Attachment F.

1.8 Scope: The term "Scope" as used herein shall mean the scope of the Commission's Investigation into facilities-based cellular carriers siting activities for sites constructed after March 28, 1990 and prior to January 10, 1992. "Scope" shall specifically exclude those three LACTC sites that are subject to the OSC's and a separate settlement agreement.

1.9 Sole Judgment: The term "Sole Judgment" as used herein shall mean that any individual who is determined to be the sole judge of a matter shall

have the permission of the Parties to exercise his or her judgment with finality, and that such exercise shall not be subject to challenge by the Parties by any means in any forum.

1.10 Temporary Facilities: The term "Temporary Facilities" as used herein shall be defined in accordance with G.O. 159 § III(D)(3), and all Commission decisions rendered, or to be rendered, thereunder.

1.11 Term: The "Term" of this Agreement shall be from the last date of execution by either Party below, through and including the date of LACTC's Last Prospective Obligation, set forth in Attachment F incorporated herein by reference.

2. Procedural Requirements

2.1 The Parties shall file a joint motion seeking Commission approval of this Agreement under Rule 51 of the Commission's Rules of Practice and Procedure. The Parties agree to use their best efforts and to cooperate to obtain the approval of this Agreement by the Commission. In their joint motion, the Parties agree to ask the Commission:

(a) to grant LACTC the reasonable time allotted in Attachment F (Prospective Obligations), incorporated herein by reference, to perfect compliance at any site subject to this Agreement now lacking all necessary permits or approvals of other public agencies;

(b) to defer finding that non-compliance with G.O. 159, or the permit and approval requirements of other public agencies, renders an order of the Commission to remove a non-compliant site reasonable and in the public interest;

(c) to find that good cause exists to grant deviation from the strict timing requirements of G.O. 159 until the date of the Last Prospective Obligation set forth in Attachment F; and . . .

(d) to find that it is appropriate to approve, by resolution containing the suggested language set forth in Attachment G hereto, advice letters seeking to modify any site or advice letter within the Scope, which otherwise satisfies the requirements of G.O. 159.

2.2 The Parties do not intend by this Agreement or the obligations set forth in paragraph 2.1 above: (1) to intrude in any way upon the discretion of the Commission in reviewing this Agreement, or in granting some or all of the requests set forth in 2.1(a) through (d); (2) to preclude or impede any other public agency with jurisdiction from seeking removal of a site; or (3) to affect or limit future protests or Commission action.

2.3 With the exception of casual references of support, CACDA and LACTC agree that any ex parte communications, as defined by Rule 1.1(g) of the Commission's Rules of Practice and Procedure, regarding this Agreement, whether procedural or substantive, will be made only if representatives from both Parties are present.

2.4 By this Agreement, the Parties intend LACTC to be released from any further investigation into its communications Facilities construction and siting activities subject to the Scope of the Investigation. Consequently, upon the issuance of a Commission decision approving this Agreement, LACTC shall be dismissed as a respondent to the Investigation. Once dismissed, LACTC agrees that it will not move to intervene in the Investigation and will, therefore, lack standing to further participate in the Investigation. LACTC's Prospective Obligations hereunder shall continue unaffected by the dismissal of LACTC as a respondent in the Investigation.

2.5 LACTC and CACDA agree that individuals designated herein as having Sole Judgment over a matter are appropriate for such designation. LACTC and CACDA further agree that neither will later contest or object to the designation of such individual. The Parties also agree that such designated individuals may be

changed from time to time at CACD's or the Commission's discretion without effect to the terms and conditions contained herein. Neither LACIC nor CACDA intends this provision to prohibit communication with such individuals by either Party, the Commission, its representatives or employees. Nothing in this Agreement is intended to require or to encourage such a designated individual to act in a manner inconsistent with their employment obligations to the Commission.

2.6 No provision of this Agreement is intended to restrict either Party's ability to advocate changes to G.O. 159. No prospective changes to G.O. 159 shall relieve LACIC of its Prospective Obligations under this Agreement, unless the Commission so orders.

3. Obligations of the Parties

3.1 LACIC has agreed to and shall pay the amounts indicated at the times indicated in the one of four Payment Schedules attached hereto as Attachment E, incorporated herein by reference, and adopted by the Commission. Schedule 1 to Attachment E reflects payments specifically associated with alleged site and advice letter violations paid directly to the State General Fund. Schedule 2 to Attachment E reflects payments of a total agreed upon amount to be split between the State General Fund and a new Commission Cellular Siting Trust Fund as proposed by CACDA. Schedule 3 to Attachment E reflects payments to the State General Fund and to the State Department of Fish and Wildlife for environmental mitigation. Schedule 4 to Attachment E reflects payments to the State General Fund, to the Cellular Siting Trust Fund, and to the State Department of Fish and Wildlife for environmental mitigation. The Parties acknowledge and agree that the Commission's adoption of one of the four Payment Schedules pursuant to this paragraph 3.1 is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.2 By this Agreement, LACTC takes full responsibility for the actions of its partners, affiliates, agents, employees, attorneys, and independent contractors. Therefore, the effectiveness of this Agreement is contingent upon the Commission's issuance of a decision releasing LACTC, its partners, affiliates, agents, employees, attorneys, and independent contractors from any and all Commission imposed liability arising out of the siting activities subject to and within the Scope of the Investigation. The Parties acknowledge and agree that this paragraph 3.2 is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.3 LACTC and CACDA agree that the allocation of payments to alleged site-specific violations set forth in Schedule 1 to Attachment E is a fair and reasonable reflection of the value of various disputed claims arising from the Investigation. Both parties agree not to argue in this or any other forum that some other allocation of values was more appropriate or more fair and reasonable. The Parties acknowledge and agree that this paragraph 3.3 is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.4 LACTC and CACDA recognize and acknowledge that despite the efforts of both Parties throughout the Investigation to bring all sites within the Scope into compliance with the permit or approval requirements of other public agencies, some sites may still not be in complete compliance. Therefore, LACTC agrees to fulfill the Prospective Obligations set forth in Attachment F, attached hereto and incorporated herein by reference. The Prospective Obligations concern all sites identified in Attachments A through C that may not have all permits or approvals required by any public agency with jurisdiction over the site. The Parties acknowledge and agree that this paragraph 3.4 is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.5 Upon LACTC's fulfillment of the Last Prospective Obligation set forth in Attachment F, all sites remaining - excluding any LACTC is instructed to remove and which have not been removed, and excluding any non-compliant sites that would have been within the Scope of the Investigation but were not discovered until after the date of the Last Prospective Obligation - shall be deemed compliant with G.O. 159 pursuant to the Commission's order approving this Agreement. The Parties acknowledge and agree that this paragraph 3.5 is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.6 LACTC shall publish the public notice attached hereto as Schedule 1 of Attachment D and incorporated herein by reference. The public notice shall be placed in the publications of general circulation identified in Schedule 2 of Attachment D.

3.7 To the extent LACTC and CACDA have failed - despite diligent effort - to identify construction activities at a site that was within the Scope, that is not identified in Attachments A through C, and for which no Facilities exist at the time of execution of this Agreement, LACTC and CACDA agree to resolve all potential claims regarding those sites pursuant to this Agreement and without any further payment to, or fine or penalty imposed by, the Commission. The Parties acknowledge and agree that this provision is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.8 To the extent that LACTC and CACDA have failed - despite diligent effort - to identify construction activities at a site that was within the Scope, but which is not identified in Attachments A through C, and for which some Facilities exist at the time of the execution of this Agreement, LACTC and CACDA agree to resolve all potential claims concerning such sites pursuant to this Agreement and in the following manner:

(a) If such site is identified by either Party, the Commission or another public agency prior to the date of the Last Prospective Obligation set forth in Attachment F, LACTC shall treat the site as subject to the Prospective Obligations; or . . .

(b) If such site is identified by either Party, the Commission or another public agency after the date of the Last Prospective Obligation set forth in Attachment F, LACTC shall immediately and voluntarily remove the Facilities and restore the site to its original condition to the best of LACTC's ability.

The Parties acknowledge and agree that this paragraph 3.8 is an Essential Term, and is therefore not severable from other terms and conditions identified herein as Essential Terms.

3.9 LACTC has cultivated and shall continue to cultivate respect for all aspects of siting compliance among its employees, contractors and agents in a manner LACTC deems in its Sole Judgment to be effective and productive.

3.10 For the Term of this Agreement, LACTC shall be responsible for the following:

(a) LACTC shall establish its own internal controls or procedures designed to avoid the imposition of penalties pursuant to Public Utilities Code § 2114 for inaccurate information provided to the Commission. These controls and procedures shall include the requirement that the General Manager of LACTC, or in his temporary absence the Chief Financial Officer, shall counter-sign all advice letter filings or other submissions made under penalty of perjury for a period of time up to and including the date of LACTC's Last Prospective Obligation set forth in Attachment F.

(b) The Commission or any of its staff may inform LACTC of a question concerning the accuracy of any information provided by LACTC to the Commission or its staff. If so informed, LACTC shall submit a signed affidavit